



IN REPLY REFER TO:

United States Department of the Interior

BUREAU OF INDIAN AFFAIRS

Sacramento Area Office
2800 Cottage Way
Sacramento, California 95825



SEP 23 1999

1315

Mr. Rick Breitenbach
CALFED Bay-Delta Program
1416 Ninth Street
Suite 1155
Sacramento, CA 95814

SEP 22 1999

Dear Mr. Breitenbach:

As invited by your letter of June 25, 1999, we have reviewed the Draft Programmatic Environmental Impact Statement/Environmental Impact Report (Draft Programmatic EIS/EIR) for the CALFED Bay-Delta Program and a copy of the Revised Phase II Report. A majority of the 107 federally recognized Indian Tribes in California are located within the CALFED Geographic Scope of Solution Areas (Project Description, Page 1-11, Figure 1-3). We are very concerned that future CALFED sponsored projects and activities could impact, beneficially or adversely, Indian trust resources including land, water, and fisheries. However, due to the programmatic nature of the documents, we are unable to determine what specific impacts the program might have. We understand that when many proposed project actions are more fully developed, while they will environmentally tier from these programmatic documents, they will usually require additional environmental review. We wish to participate in these environmental reviews for specific project actions as they are developed.

We are concerned that Tribal governmental issues were not included in the DEIS/EIR. Additionally, there is no recognition in the document of the inherent sovereignty of Indian Tribes. This is largely due to the limited participation of Tribal governments in the scoping process for the EIS, brought about by failure to deal with Tribes on a government to government basis. This lack of Tribal participation in policy formation for CALFED has also resulted in Tribal exclusion from the interlocking agreements that constitute the basic structure of CALFED. Therefore, we recommend that Tribal representation be included in CALFED at the policy level, as a means of ensuring the Federal government fulfills its trust responsibility to Indian Tribes.

We have the following specific comments on the Draft EIS/EIR:

Summary

Page 2-7 Ecosystem Restoration Program

- Restoring critical in stream and channel-forming flows in Bay-Delta tributaries:
Volume II: Ecosystem Restoration Program Plan

Yolo Basin Ecological Management Zone Vision

- Natural Floodplain and Flood Process

Target 1 and Target 3

Programmatic Action 1A

Comment: For the lower valley watershed of Cache Creek, will the flood process be consistent with flood control requirements? How will riparian areas and stream bank stabilization be protected, so that flood waters that are being released to develop the natural floodplain will not contribute to adverse soil erosion and stream bank destabilization on the Rumsey Rancheria shoreline?

Page 1-22 Sacramento and San Joaquin River Basin Comprehensive Study

- Provide a comprehensive analysis of the Sacramento River and San Joaquin basin management systems and to partner with State of California to develop master plans for flood management into the next century. Flood control measures to control flooding in the Sacramento Valley.

Comment: Flood management decisions historically within the Yolo Basin Ecological Management Zone have led to flooding of trust land on the Big Valley Rancheria. The flood management decisions regarding lake levels on Clear Lake have contributed to the flooding of Big Valley Rancheria trust lands. The decisions not to release Clear Lake water into Cache Creek has caused flooding of trust lands, significant loss of property, and the evacuation of people from the Big Valley Rancheria.

Questions: How will future Clear Lake flood management actions be regulated to minimize the flooding of shoreline parcels around Clear Lake so that trust resources will be protected?

Chapter 2 Alternative Descriptions

Page 2-9 Ecosystem Restoration Program

- Mercury. Reducing the impacts of trace metals, such as copper, cadmium, and zinc, in upper watershed area near abandoned mine sites.

Comment: Yolo Basin Ecological Management Zone; an abandoned mercury mine site on the east side of Clear Lake is negatively contributing to Clear Lake water quality. The mine site is located within the Yolo Basin Ecological Management Zone. The reclamation of the site has not been completed.

Page 2-10 Water Use Efficiency Program

- Expanding state and federal programs to provide increased levels of planning and technical assistance to ensure that water management is improved.

Comment: Recovered losses; water suppliers that implement water management conservation

improvement projects need to show that they are in compliance with applicable state, federal and tribal laws that protect local Tribal government economies. The recovered losses need to be assessed to so that the reallocation are not allocated to large municipalities water districts and the environment.

Section 7.15.1 Summary

Comment: Ecosystem restoration may have adverse affects to trust lands located in the Yolo Basin Ecological Management Zone. The Rumsey Rancheria has trust lands that may be impacted adversely by the Ecosystem Restoration program by releasing Cache Creek flood waters. The Rumsey Rancheria shoreline may adversely be effected by increasing bank destabilization and soil erosion cause by the release of flood waters within Cache Creek.

Middletown Rancheria has a water right waters in Putah Creek Watershed that are stored in Lake Berryassa. There is a concern that tribal water will be utilized for environmental and irrigation use without consent of the tribe.

Big Valley Rancheria: Clear Lake flood management decisions have contributed to the inundation of Big Valley Rancheria. How will flood control measures address the protection of the Big Valley Rancheria from future flooding?

Section 7.15.5 Significance Criteria

Comment: Federal reserved water rights and the diminishment of Indian water resources are considered significant adverse effects. Water resources that are over appropriated, transferred, or allocated to environmental protection; whereby limiting the available water resource(s) would be impairing the growth inducing potential of the Tribal government.

Tule River Reservation: Lake Success reservoir enlargement project: appropriating water or initiating water transfers from Lake Success reservoir without Tribal consultation may adversely effect tribal water rights.

Section 7.15.7.2 Sacramento River and San Joaquin River Regions

Table Mountain Rancheria: the water transfer program activities - the transferring of water from Friant reservoir may adversely affect tribal reserved water rights.

Section 7.15.9 Additional Impact Analysis

Growth Inducing Impacts:

Comment: Jackson Rancheria: the Water Efficiency Program activities - recovered losses and water management conservation improvement projects need to be in compliance with applicable

state, federal and tribal laws so that they consider water resources that are within tribal government(s) watersheds. The recovered losses need to be assessed, so that the reallocation of water are not allocated only to large municipalities, water districts and the environment.

Section 8.1.12 Executive Order 13007 (Indian Sacred Sites) and April 29, 1994 Executive Order Memorandum.

Comment: To fully comply with NEPA and CEQA, the program will need to be coordinated with the appropriate Tribal government(s) within the project area when a project is being planned and implemented - during all the Phases of the program.

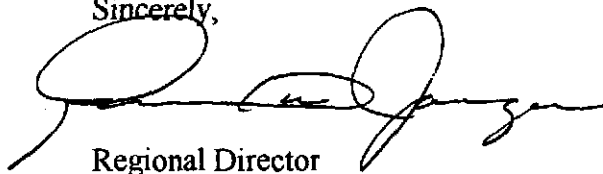
Section 8.2.9 Water Rights

Comment: Tribal Water Quality Standards: the BIA supports Tribal governments' inherent authority to promulgate tribal water regulations that protect reservation water quality and quantity.

Tribes that have established federal reserved water rights and tribes with unquantified federal reserved water rights need to be consulted to address how their water resources may be affected and dealt with in CALFED programs.

If you have any questions on these comments, please contact William Allan, Regional Environmental Protection Specialist, at (916) 978-6043, or Dale Morris, Regional Natural Resources Officer, at 978-6051.

Sincerely,

A handwritten signature in black ink, appearing to read "William Allan", written over a horizontal line.

Regional Director

cc: Superintendent, Central California Agency
Superintendent, Southern California Agency
Superintendent, Northern California Agency